



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JRE
Docket No: 453-99
10 April 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: FORMER [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was retired by reason of physical disability, vice discharged with entitlement to severance pay.
2. The Board, consisting of Ms. Madison and Messrs. Chapman and Mazza, reviewed Petitioner's allegations of error and injustice on 23 March 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Enclosure (1) was filed in a timely manner.
 - c. Petitioner was evaluated by a medical board on 24 December 1992, and given a diagnosis of degenerative disc disease with annular bulges at L4-L5 and L5-S1, symptomatic. On 1 February 1993, the Record Review Panel of the Physical Evaluation Board made preliminary findings that Petitioner was unfit for duty, and that his back condition was ratable at 10% under Department of Veterans Affairs (VA) code 5293-5295. Petitioner accepted the recommended findings of the Record Review Panel on 9 February 1993, and he was discharged with entitlement to disability severance pay on 6 May 1993. He completed 18 years and 10 months of active service. The VA rated his back condition at 40% from 24 June 1995, and 60% from 28 February 1995, and he was found to be unemployable from the

latter date.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds that Petitioner's back condition was ratable at 20 to 40% at the time of his discharge from the Marine Corps. It concludes that reasonable doubt should be resolved in his favor, and that the higher rating be assigned to his condition. The Board was not persuaded, however, that the condition was ratable in excess of 40% at any time during the 6 May 1993-5 May 1998 period. In this regard, it finds that Petitioner's subjective complaints, as reported to VA examiners, and which formed the basis for the 60% rating assigned by the VA, were not completely supported by objective evidence.

In view of the foregoing, the Board concludes that it would be in the interest of justice to correct Petitioner's record to show that he was permanently retired by reason of physical disability on 7 May 1993.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was released from active duty on 6 May 1993, vice discharged.

b. That Petitioner's naval record be further corrected to show that on 5 May 1993, while he was entitled to receive basic pay, the Secretary of the Navy found him unfit to perform the duties of rank by reason of physical disability due to degenerative disc disease with annular bulges at L4-L5 and L5-S1, rated at 40% in accordance with the Standard Schedule for Rating Disabilities in use by the Department of Veterans Affairs at the time the Secretary found Petitioner unfit, Code Number 5293-5295; and that accepted medical principles indicate the disability is of a permanent nature, accordingly, the Secretary directed that Petitioner be transferred to the Retired List effective 7 May 1993, pursuant to 10 U.S. Code 1201.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

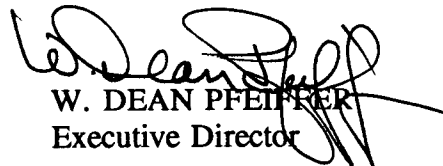
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



ROBERT D. ZSALMAN
Recorder

JAMES R. EXNICIOS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director